

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF SOUTH CAROLINA
 3 CHARLESTON DIVISION

4 - - - - -X
 :
 5 DONALD A. LABELLE, AS PERSONAL :
 REPRESENTATIVE OF THE ESTATE OF : Case No.
 6 CHRISTINE LEZZO LABELLE, DECEASED, : 2:98-3235-23
 :
 7 Plaintiff, :
 :
 8 vs. :
 :
 9 PHILIP MORRIS, INCORPORATED (PHILIP :
 MORRIS, U.S.A.) LIGGETT & MYERS, INC.; : Medical Mon.
 10 THE BROOKE GROUP LIMITED; AND : Case No.
 LIGGETT GROUP, INC., : 00-C-6000
 11 :
 Defendants. :
 12 :
 - - - - -X

13
 14 Durham, North Carolina
 15 Tuesday, August 22, 2000
 16 VIDEOTAPED DEPOSITION OF STEVEN D. SHIPE, a
 17 witness herein, called for examination by counsel for
 18 Plaintiff in the above-entitled matter, pursuant to
 19 notice and agreement, the witness being duly sworn by
 20 LISA A. DeGROAT, RPR, a Notary Public in and for the
 21 State of North Carolina, taken at the Washington Duke
 22 Inn, 3001 Cameron Boulevard, Durham, North Carolina,
 23 at 9:03 a.m., on Tuesday, August 22, 2000, and the
 24 proceedings being taken down in Stenotype by LISA A.
 25 DeGROAT, RPR, and transcribed under her direction.
 A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 APPEARANCES:
 2
 3 On behalf of the Plaintiff:
 4 FREDERICK C. BAKER, ESQUIRE
 5 Ness, Motley, Loadholt, Richardson & Poole
 6 28 Bridgeside Boulevard
 7 Mount Pleasant, South Carolina 29465
 8 (843) 216-9000
 9
 10 Telephonically on behalf of the Plaintiff:
 11 SCOTT LONG, ESQUIRE
 12 Hendrickson & Long
 13 214 Capital Street
 14 Charleston, West Virginia 25301
 15 (304) 346-5500
 16
 17 On behalf of the Defendant: (Liggett Group)
 18 NANCY ELIZABETH STRAUB, ESQUIRE
 19 Kasowitz, Benson, Torres & Friedman, L.L.P.
 20 1301 Avenue of the Americas
 21 New York, New York 10019-6022
 22 (212) 506-1700
 23
 24
 25

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 APPEARANCES:

2

3 On behalf of the Defendant: (Liggett Group)

4 EUGENE C. FULTON, JR., ESQUIRE

5 Sweeny, Wingate & Barrow, P.A.

6 1515 Lady Street

7 Columbia, South Carolina 29211

8 (803) 256-2233

9

10 On behalf of the Defendant: (Philip Morris)

11 BRIAN V. OTERO, ESQUIRE

12 Hunton & Williams

13 Riverfront Plaza, East Tower

14 951 East Byrd Street

15 Richmond, Virginia 23219

16 (804) 788-8683

17

18 On behalf of the Defendant: (Philip Morris)

19 JOSEPH PATRICK ARCHIE, ESQUIRE

20 Dechert, Price & Rhoads

21 4000 Bell Atlantic Tower

22 1717 Arch Street

23 Philadelphia, Pennsylvania 19103-2793

24 (215) 994-2846

25

A. WILLIAM ROBERTS, JR. & ASSOCIATES

4

1 C O N T E N T S

2 THE WITNESS EXAMINATION BY COUNSEL FOR

3 STEVEN D. SHIPE PLAINTIFF DEFENDANTS

4 By Mr. Baker 6

5 By Ms. Straub 86

6

7 * * * * *

8

9 E X H I B I T S

10 PLAINTIFF'S FOR IDENTIFICATION

11 Deposition Exhibit No. 1 9

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. WILLIAM ROBERTS, JR. & ASSOCIATES

5

1 THE VIDEOGRAPHER: This is the video
 2 deposition of Mr. Steven Shipe, taken by the
 3 plaintiff, in the matter of Donald -- Donald LaBelle,
 4 et al., plaintiffs, versus Philip Morris,
 5 Incorporated, et al., defendants. Case Number
 6 2:98-3235-23, and medical monitoring cases, Civil
 7 Action Number 00-C-6000.

8 This deposition is being held in the

9 Washington Duke Hotel, Durham, North Carolina, on
10 August the 22nd, 2000. The starting time is
11 9:03 a.m.
12 The court reporter is Lisa DeGroat, with
13 the firm of Bryant Court Reporting. The videographer
14 is Bruce Clark, for the firm of Video Visions,
15 Incorporated.

16 Would counsel, please, introduce
17 themselves?

18 MR. BAKER: Fred Baker, for the plaintiff.

19 MR. FULTON: Gene Fulton, for the
20 defendant, Liggett.

21 MS. STRAUB: Nancy Straub, for defendant,
22 Liggett Group, Inc. and Brooke Group Holdings, as
23 well as the witness.

24 MR. OTERO: Brian Otero, for Philip Morris.

25 MR. ARCHIE: Joseph Archie, for Philip

A. WILLIAM ROBERTS, JR. & ASSOCIATES

6

1 Morris in the medical monitoring cases.

2 THE VIDEOGRAPHER: Thank you.

3 Would the reporter, please, swear in the
4 witness?

5 MR. BAKER: Actually, and Scott Long.

6 THE VIDEOGRAPHER: And --

7 MR. BAKER: Scott?

8 MR. LONG: Yes. Scott Long, for
9 plaintiffs.

10 THE VIDEOGRAPHER: Thank you.

11 Would the reporter, please, swear in the
12 witness?

13 P R O C E E D I N G S

14 Whereupon,

15 STEVEN D. SHIPE,
16 business address at Liggett Group, Inc., 700 West
17 Main Street, Durham, North Carolina 27701,
18 (919) 683-9242, residence address at [DELETED]
19 was called as a

20 witness by counsel for Plaintiff, and having been
21 duly sworn by the Notary Public, was examined and
22 testified as follows:

23 DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF

24 BY MR. BAKER:

25 Q. Good morning, Mr. Shipe. My name is

A. WILLIAM ROBERTS, JR. & ASSOCIATES

7

1 Fred Baker. I'm counsel for the plaintiff, as you've
2 just heard, in LaBelle, and also West Virginia
3 medical monitoring cases.

4 I'm going to be taking your deposition
5 today. If you feel it necessary in the course of the
6 deposition to ask for clarifications, definitions,
7 explanations of any words or questions presented
8 during the course, please, ask me.

9 Second, if I ask a yes-or-no question,
10 please, answer it with a yes-or-no answer. If you
11 feel it's necessary to give an additional explanation
12 to put it into context, feel free to do so, but,
13 first, answer my question. Do you understand?

14 A. Yes.

15 Q. Thanks.

16 Third, please, let me know if at anytime
17 you want to take a break. We'll finish with the

18 question on the table, and then you can take the
19 break.

20 Finally, for the record, I'd like to
21 reiterate the local rules in South Carolina. Local
22 rule 3.0 -- 30.04, which states that objections shall
23 be stated concisely, in a nonargumentative and
24 nonsuggestive manner, stating the basis of the
25 objection, and nothing more.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

8

1 Please, state your name and address for the
2 record, Mr. Shipe?

3 A. My name is Steven D. Shipe. Address,
4 [DELETED]

5 Q. Mr. Shipe, have you ever been deposed
6 before?

7 A. Yes, I have.

8 Q. Would you, please, give me the approximate
9 date and the name of the action or the nature of the
10 action?

11 A. I was deposed in 1997 for a case, which I
12 believe involved Blue Cross Blue Shield in the state
13 of Minnesota, and was recently deposed this past
14 month for a case in the Brookland, New York area.

15 Q. Have you ever testified at trial before,
16 Mr. Shipe?

17 A. No, I have not.

18 Q. Mr. Shipe, when were you first told that
19 you were going to be listed as a fact witness in the
20 LaBelle case?

21 A. Approximately two to three weeks ago.

22 Q. And in the West Virginia medical monitoring
23 cases?

24 A. Same time frame.

25 Q. Okay. What subject areas relevant to these

A. WILLIAM ROBERTS, JR. & ASSOCIATES

9

1 lawsuits do you believe that you would have
2 information?

3 A. My experiences with Liggett are a
4 combination of the sales and marketing aspects of our
5 business.

6 Q. Okay. Mr. Shipe, I'm going to hand you the
7 notice in the LaBelle case.

8 MR. BAKER: And if you can mark this as
9 Exhibit 1.

10 (Shipe Defendant's Deposition
11 Exhibit No. 1 was marked for
12 identification.)

13 MR. BAKER: I'm sorry I don't have enough
14 extra copies.

15 BY MR. BAKER:

16 Q. Mr. Shipe, have you seen this before?

17 A. No, I have not.

18 Q. Okay. I'd like you to turn to the -- the
19 page marked as Schedule A. And these are documents
20 that I requested that would be brought to the
21 deposition. "All documents you have reviewed in
22 preparation for your testimony in this case." Have
23 you reviewed any documents in preparation for your
24 testimony in this case?

25 A. I reviewed some documents yesterday that

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 were for the most part technical in nature, and had
2 to do with research activities and meetings within
3 our company.

4 Q. During what time frame?

5 A. I believe the early 1990s.

6 Q. Okay. I'd like copies of those, please.

7 MS. STRAUB: You actually do have the
8 documents that were provided to you pursuant to
9 Dr. Woodson's deposition and under the discovery
10 request.

11 BY MR. BAKER:

12 Q. Okay. "All documents" -- the second item
13 is, "All documents and notes authored or prepared by
14 you regarding smoking and health or the manufacturing
15 or marketing of Pyramid cigarettes." Do you have any
16 of those documents in your possession?

17 A. No, I do not.

18 MR. BAKER: Okay. Item number four,
19 "Copies of all transcripts of trial or other
20 deposition testimony given by you in a tobacco case."
21 I understand there was a deposition taken in the
22 Brookland case. Could I, please, have a copy of
23 that?

24 MS. STRAUB: As soon as we get the
25 transcript, I'll forward it to you.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 MR. BAKER: Okay. Thank you.

2 BY MR. BAKER:

3 Q. And do you have a CV or a resume?

4 A. No, I do not.

5 Q. Okay. Mr. Shipe, by whom are you employed?

6 A. I'm employed by Liggett Group,
7 Incorporated.

8 Q. And how long have you been employed by
9 Liggett Group?

10 A. I was hired in June of 1980.

11 Q. And what's your present position?

12 A. Presently president of Liggett southern
13 business unit, as well as corporate vice president of
14 marketing.

15 Q. Mr. Shipe, would you, please, give me a
16 brief history, starting from your -- in chronological
17 order of your education and professional life from
18 the time graduating from high school to June of 1980,
19 when you joined Liggett?

20 A. Basically graduated from high school in
21 June of 1975. I completed approximately three years
22 of undergraduate work at Ohio State University. I
23 joined Liggett in June of 1980, and completed my --
24 my last year of undergraduate work at night school.
25 Graduating from the University of Indianapolis.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 Q. When you joined Liggett in 1980, what was
2 your first position?

3 A. I was hired as an area sales
4 representative.

5 Q. And what were you -- what were your
6 responsibilities as an area sales representative?

7 A. Primarily working a defined territory in
8 the central Ohio area, calling on retail stores and

9 setting or implementing retail promotions on Liggett
10 brands in retail stores, as well as periodically
11 calling on distributors or wholesalers that ordered
12 Liggett products.

13 Q. How long did you hold that position?

14 A. Approximately two, two and a half years.

15 Q. So in 1982 you changed positions; is that
16 correct?

17 A. Actually, yeah. January of '83, to be
18 precise.

19 Q. And what was your new position?

20 A. Took an account manager position in our
21 generic and private label division, which was being
22 started and relocated to the Milwaukee, Wisconsin
23 marketing area.

24 Q. And what were your duties in that position?

25 A. In that position I was working primarily

A. WILLIAM ROBERTS, JR. & ASSOCIATES

13

1 our generic and private label cigarettes, calling
2 mostly on wholesale, as opposed to retail. And
3 worked a three-state area, Wisconsin, Iowa and parts
4 of the upper peninsula of Michigan.

5 Q. And how long did you hold the position of
6 account manager for generic --

7 A. Approximately one year.

8 Q. So in 1994 roughly you got a new position;
9 correct?

10 A. '84. Yes.

11 Q. '84. I'm sorry.

12 A. That's correct.

13 Q. And what was your new position?

14 A. I was a district sales manager, working
15 both the Liggett premium brands, as well as Liggett's
16 generic and private label brands.

17 Q. And what were your duties in that position?

18 A. It was prime -- it was basically a sales
19 management position. So I was responsible for the
20 state of Indiana, and was responsible for directing
21 the activities of approximately five sales
22 representatives.

23 Q. So in all of Indiana there were only five
24 sales representatives?

25 A. Yes, during that period of time.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

14

1 Q. And how long did you hold the position of
2 district sales manager?

3 A. Six years.

4 Q. And so we're into 19 --

5 A. 1990.

6 Q. -- 1990.

7 And your new position would be?

8 A. It was product manager in our cigarette and
9 marketing department in Durham, North Carolina.

10 Q. And what were your duties as a product
11 manager?

12 A. It was primarily working with our field
13 sales organization, and developing and implementing
14 sales promotion.

15 Q. Was that for a specific brand or for all
16 brands?

17 A. For all brands.

18 Q. At that time how many brands did Liggett
19 have?
20 A. In 1990 we had four -- four premium brands,
21 and counting private label brands probably 15 to 20
22 discount or generic brands.
23 Q. What is the difference between a generic
24 brand and a private label brand and a premium brand?
25 A. The basic difference between premium brands
A. WILLIAM ROBERTS, JR. & ASSOCIATES

15

1 and the generic private label is a category -- is a
2 price differential. The generic and private label
3 brands have a -- have a lower list price that -- that
4 normally translates into a lower price for the
5 consumer at the retail shelf.

6 The difference between generic and the
7 private label deals with the ownership of the
8 trademark. In the case of a private label brand the
9 trademark is owned by the customer, as opposed to
10 Liggett.

11 And in the private label sense, Liggett
12 offers a contract manufacturing service, as opposed
13 to an ownership of a trademark, which we would --
14 excuse me. Which we would have with our other
15 generic brands.

16 Q. Can you give me some examples of private
17 label brands?

18 A. During that period of time Liggett
19 manufactured a Ralph's slim price brand for a chain,
20 a grocery store chain in California. We manufactured
21 a Tourney brand for Speedway Super America, a
22 convenience store chain. Are two examples.

23 Q. And so how long did you hold the position
24 of product manager?

25 A. Approximately two years.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

16

1 Q. And how many people worked under you at
2 that time?

3 A. I believe I had two administrative support
4 people working for me.

5 Q. And to whom did you report when you were
6 the product manager?

7 A. Reported to the vice president of
8 marketing.

9 Q. And who was that at the time?

10 A. When I came in in 1990, I was reporting to
11 Steve -- Steve Cohen.

12 Q. And did the position change, the vice
13 president of marketing, during that time frame?

14 A. During -- during the second year I held the
15 position the vice president of marketing was a
16 gentleman by the name of Bob Robinson.

17 Q. And so how long did you hold this position?
18 I'm sorry if I already asked that.

19 A. Approximately two years.

20 Q. So we're into 1990 --

21 A. '2.

22 Q. '2.

23 And so what new position did you get in
24 1992.

25 A. The position in 1992 was a director of

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 sales promotion position, which had many of the same
2 responsibilities as the product manager, but focused
3 more heavily on working with the field sales
4 organization in developing the required advertising
5 and collateral materials needed to implement the
6 programs.

7 Q. So did you actually participate in the
8 design of promotional materials?

9 A. In some of the collateral materials, like
10 the point of sale materials that were used at retail,
11 ensuring that the ads, advertisements, that were run
12 during that period of time met all of the legal
13 requirements, and coordinated with technical aspects
14 of the placement of the ads.

15 Q. And this position had nationwide
16 responsibility then --

17 A. Yes.

18 Q. -- am I correct?

19 To whom did you report when you were
20 director of sales promotions?

21 A. I reported to the senior vice president of
22 marketing.

23 Q. And who was that?

24 A. Gerry, with a G, Reid, R-E-I-D.

25 Q. And how many people worked under you?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 A. I think, again, I had two, maybe three
2 administrative support people.

3 Q. And so how long did you hold this position
4 of director of sales promotion?

5 A. Approximately a year and a half, two years.

6 Q. So in 1995 you got a new position; correct?

7 A. Yes.

8 Q. And that position was?

9 A. Director of marketing.

10 Q. And what were your duties as director of
11 marketing?

12 A. At that point I was overseeing all of the
13 marketing activities of Liggett at the time. That --
14 that would include in our company everything from
15 development of sales promotions to the creation and
16 development of any -- any advertising that we did at
17 the time.

18 Q. And this position had nationwide
19 responsibility; am I correct?

20 A. Yes. Yes, it did.

21 Q. Again, to whom did you report?

22 A. I believe at that time I would have been
23 reporting to the -- the senior vice president of
24 sales, I believe, was the title.

25 Q. And how long did you hold this position?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 A. One year.

2 Q. One year.

3 So in 1996 you got a new job?

4 A. In 1996 I was promoted to vice president of
5 marketing.

6 Q. And is that an officer position within
7 Liggett?

8 A. Yes, it is.

9 Q. And what were your duties as the vice
10 president of marketing?
11 A. At that point I was involved in, again, the
12 creation, development and the implementation of
13 all -- all marketing and sales promotion activities
14 within the company.
15 Q. How did that differ from being director of
16 marketing?
17 A. The main -- the main difference was it was
18 an elevation to an officer position, and it separated
19 marketing out as a -- as a stand-alone division in
20 the reporting structure of the company, as opposed to
21 having marketing reporting up -- up through the sales
22 division.
23 Q. And how many people worked under you as
24 vice president of marketing?
25 A. I believe I had four, maybe five people at
A. WILLIAM ROBERTS, JR. & ASSOCIATES

20

1 that time.
2 Q. And how long did you hold the position of
3 vice president of marketing?
4 A. Technically I still hold that position. In
5 January of 1997 Liggett reorganized into four
6 independent business units. One being a
7 manufacturing business unit. The other three being
8 sales and marketing business units that had
9 geographic boundaries.
10 And in addition to holding the position of
11 vice president of marketing I also assumed the
12 position of president of our southern business unit,
13 which is based in Durham, North Carolina.
14 Q. So there's four independent units. One is
15 manufacturing. One is the southern business unit?
16 A. That's correct.
17 Q. What are the other two?
18 A. The other two are the northern business
19 unit, which has a base in Mount Laurel, New Jersey,
20 and the fourth is our western business unit, which is
21 based in Dallas, Texas.
22 Q. And this is -- New Jersey would be -- I'm
23 sorry. Would Pennsylvania be contained in the
24 southern business unit or the northern business unit?
25 A. That would be in the northern business
A. WILLIAM ROBERTS, JR. & ASSOCIATES

21

1 unit.
2 Q. The northern business unit.
3 West Virginia, which business unit would
4 that be in?
5 A. That would be the southern business unit.
6 Q. And the president of the southern business
7 unit is an officer position; is that correct?
8 A. That is correct.
9 Q. And because you concurrently hold the
10 position of vice president of marketing, you still
11 have nationwide responsibility; is that correct?
12 A. For what limited marketing activities we
13 presently do. Yes.
14 Q. To whom do you report in your position as
15 president of the southern business unit?
16 A. To our -- to Liggett's CEO, Ronald Fulford,
17 F-U-L-F-O-R-D.

18 Q. Are you a board member at Liggett?
19 A. I don't believe so. No.
20 Q. Are you authorized to speak for Liggett?
21 A. I -- I'm giving this deposition, and my
22 opinions are -- unless stated otherwise, would be the
23 opinions of the corporation.
24 Q. Do you own stock in Liggett?
25 A. Liggett does not have any public shares.
A. WILLIAM ROBERTS, JR. & ASSOCIATES

22

1 Q. Do you own stock in the ultimate parent
2 company, Vector Group?
3 A. I do not own any shares. I do have share
4 options presently.
5 Q. Can you identify for me the various heads
6 of Liggett during the past ten years?
7 A. In 1990 through 19 -- probably 1992 the --
8 the president of Liggett was Jim Turner. In 1992
9 probably -- I'm probably taking a step back.
10 Probably mid-year 1991 there was a change, and
11 Spencer Volk, V-O-L-K, was the CEO of Liggett.
12 1993 through 1994, the CEO would be Ed
13 Horrigan. 1995 through 1990 -- most of 1996, Reuben
14 Chakalien, C-H-A-K-A-L-I-E-N, I believe. And since
15 late 1996 to maybe January -- or January 1997 to the
16 present the -- the head of Liggett is Ronald Fulford.
17 Q. Do you know why Jim Turner stepped down as
18 president of Liggett?
19 MS. STRAUB: Objection to the form.
20 THE WITNESS: I believe he retired.
21 BY MR. BAKER:
22 Q. How about Spencer Volk, do you know why he
23 stepped down?
24 A. I believe he resigned.
25 Q. Do you know why he resigned?
A. WILLIAM ROBERTS, JR. & ASSOCIATES

23

1 A. No, I do not.
2 Q. Ed Horrigan, do you know why he stepped
3 down?
4 A. Again, he resigned. I'm not sure to the
5 reasons why.
6 Q. Reuben Chakalien?
7 A. Again, Mr. -- Mr. Chakalien retired. I
8 think his -- his goal when he took the position over
9 was as more of a transitional period until a
10 permanent CEO could be found.
11 Q. Do you meet with Mr. Fulford on a --
12 Fulford on a regular basis?
13 A. Fairly regular. Yes.
14 Q. Mr. Shipe, are Liggett cigarettes sold in
15 West Virginia?
16 A. I believe so. In some retail locations.
17 Yes.
18 Q. What brands of Liggett cigarettes are sold
19 in West Virginia?
20 A. Our -- presently we have one premium brand,
21 Eve, which is somewhat regionally distributed in
22 West Virginia.
23 Q. Do you know what regions?
24 A. Just -- it varies. Our brands are not
25 available in each and every store. It's probably on
A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 average in somewhere between 20 to 25 percent of the
2 retail outlets that sell cigarettes, and that varies
3 by, you know, retailers' decisions.

4 Sometimes they will stock it, and decide
5 not to stock it, and they may restock it. So at any
6 given time we're probably in at most a quarter of the
7 retail establishments.

8 Q. I'm sorry for interrupting. What other
9 brands does -- does Liggett sell in West Virginia?

10 A. We would sell our Pyramid discount brand,
11 and there would be some -- some distribution of a new
12 discount brand that we've had on the market since
13 January of this year, the Liggett Select.

14 And also some limited distribution of
15 some -- of some what we call control label brands,
16 which are treated like private labels, in the sense
17 that individual customers would have some exclusive
18 rights to the distribution, but they would be
19 trademarks that -- that Liggett would own. In that
20 there's possibly some limited distribution of those
21 brands.

22 Q. Can you give me an example of a situation
23 of a control label brand?

24 A. We would have a brand by the name of Eagle,
25 for example, that a wholesaler in -- in a particular

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 area might have, and they might distribute that to
2 some of their retail customers that they supply, but
3 it would only be customers of -- of them -- of that
4 account that would be -- be able to buy that brand in
5 that given area.

6 Q. Are there brands of Liggett cigarettes that
7 were once sold in West Virginia, say, over the past
8 ten or 15 years that are no longer sold in
9 West Virginia?

10 A. Ten or 15 years ago we would have had
11 distribution of our other premium brands that -- that
12 would have -- that were sold to Philip Morris in
13 1998, I believe. L&M, Lark and Chesterfield. Excuse
14 me.

15 There potentially would have been
16 distribution of some private label brands that we no
17 longer have the contract manufacturing rights to. An
18 example would be Cost Cutter, a private label brand
19 that would have been supplied to the Kroger food
20 store chain.

21 Q. But that is no longer distributed to
22 Kroger, the Cost Cutter brand?

23 A. It's not a brand -- it's a trademark that's
24 still owned by Kroger, but it's not manufactured by
25 Liggett any longer.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 Q. Is it manufactured by another tobacco
2 company now?

3 A. I don't know if that brand is still on the
4 market today. It at one time was manufactured by
5 R.J. Reynold's. I do not know if they still -- still
6 distribute that brand today or not.

7 Q. What was the approximate time frame that
8 Cost Cutter brands were -- were manufactured or

9 marketed in West Virginia by Liggett?
10 A. By Liggett. I would say probably mid --
11 mid-1980s through -- a guesstimate would be maybe
12 1990, 1991.
13 Q. What is -- what is Liggett's current market
14 share of cigarettes in West Virginia?
15 A. I don't know our precise market share in
16 West Virginia. Our national market share is
17 approximately a 1.2 share. West Virginia is -- is
18 typically fairly close to -- to our average share.
19 So I would say it's in that range as well.
20 Q. Let's step back five years. In 1995 what
21 was Liggett's West Virginia market share? And if
22 it's close to the national, give the national?
23 A. I think the national share for Liggett in
24 1995 would have been closer to probably a three
25 share.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

27

1 Q. And that would approximate West Virginia's
2 market share as well?
3 A. I think that would be a reasonable
4 estimate.
5 Q. Okay. Back in 1990 what was Liggett's
6 market share in West Virginia?
7 A. Our national share was probably in the --
8 perhaps the 3.5, 3.7 range. And, again,
9 West Virginia would have had approximately that same
10 share.
11 Q. Can you think back to 1985? Do you know
12 what the market share of Liggett's products were in
13 West Virginia?
14 A. Really don't have any idea if it would have
15 been -- still approximate to a national share. I
16 think Liggett's national share in '85 was probably in
17 the -- in the four to 4.5 range.
18 Q. Do you track the market shares of other
19 tobacco companies as well in West Virginia? Does
20 Liggett?
21 A. We have access to industry data that
22 would -- that would show competitive shares in
23 various states.
24 Q. And where do you get that data?
25 A. We subscribe to information from Management

A. WILLIAM ROBERTS, JR. & ASSOCIATES

28

1 Science Associates, MSA.
2 Q. And what does that -- Management
3 Associate -- Management Science Associates' data
4 shows you market share for West Virginia?
5 A. It doesn't necessarily show complete
6 states. It will -- it will take market share
7 information by various geographic territories that --
8 that Liggett would use, and would provide share based
9 on those market areas, as opposed to a full state
10 geography.
11 So if, for example, during a period of time
12 Liggett would have two or three subsales territories
13 in -- that would -- that would encompass
14 West Virginia, it would give information for those
15 individual territories, as opposed to one unified
16 number for the state. And those territories would
17 change over the years.

18 Q. Would those territories be the same for
19 each and every tobacco manufacturer, or does Liggett
20 have specific territories?
21 A. Liggett would have specific territories
22 that would be unique to them.
23 Q. And it tells MSA that it wants these
24 territories identified?
25 A. That's correct.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

29

1 Q. Is there any other source that you rely
2 upon for sales information?
3 A. Not primarily. Well, the MSA data
4 originally there are two forms of it. One is -- is
5 what MSA refers to as CRA data, which is basically
6 shipments -- manufacturers' shipment share -- share
7 numbers based on manufactured shipments.
8 We also subscribe -- and just recently in
9 the past year to a retail shipment database that MSA
10 makes available, and that provides us with volume and
11 share information based on shipments from wholesale
12 to individual retail stores.
13 Q. Have you heard of a publication called The
14 Maxwell Report?
15 A. Yes, I have.
16 Q. And what information does that provide?
17 A. The information that we see, Liggett, for
18 Maxwell is national information based on manufacturer
19 shipments.
20 Q. Is that information, in your opinion,
21 reliable?
22 A. I can only speak for the information that
23 is Liggett's, because Liggett provides that
24 information to Maxwell. So I can -- I can speak on
25 behalf of Liggett's information as accurate. I can't

A. WILLIAM ROBERTS, JR. & ASSOCIATES

30

1 attest to the accuracy of the information supplied by
2 our competitors.
3 Q. To what do you attribute Liggett's gradual
4 decline in the market share in West Virginia?
5 A. Well, if I had the answer to that, I'd be
6 wealthy. Basically a combination of reasons.
7 Liggett has not done anything, but a very minimal
8 level of marketing and advertising of our brands.
9 Liggett has a very small sales force,
10 compared to our larger competitors. And Liggett does
11 not offer programs that are necessarily as
12 competitive as those offered by our competitors.
13 And so I would say it would be a
14 combination of those reasons has resulted in the
15 gradual decline of Liggett sales in West Virginia, as
16 well as in all other areas.
17 Q. To which companies -- or to which brands is
18 Liggett primarily losing market share on?
19 A. I don't think it's any one company. I
20 think the companies that have shown growth over that
21 period of time would be the companies that have taken
22 business from -- from Liggett, as well as the
23 other -- the other companies and the other brands
24 that are losing share.
25 Q. Does Liggett have a West Virginia specific

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 advertising and promotion budget, or is it only
2 budgeted nationally?

3 A. There are regional budgets made available
4 on the sales promotion side, and those are -- it
5 would not be a state-specific budget.

6 Q. And you said a moment ago that there's
7 roughly three regions in West Virginia for Liggett;
8 is that correct?

9 A. Well, there's -- there's -- right today as
10 we speak, there's, I believe, two different -- we
11 have two different salespeople that cover parts of
12 West Virginia, as well as parts of other areas. We
13 have -- we have one manager that oversees
14 West Virginia, as well as two other states in that --
15 in that general area.

16 Q. And he would have one lump sum budget, or
17 would he have a budget that's broken down for that
18 region that specifically includes --

19 A. He would have --

20 Q. -- West Virginia?

21 A. -- one overall budget in his -- his
22 three-state area.

23 Q. Do you know what his budget is for this
24 year?

25 A. It varies by quarter, and it is actually

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 based on -- on the sales that he makes. So it's a
2 variable budget, as opposed to a fixed number.

3 Q. Can you give me a rough approximation of
4 what it was in the past quarter?

5 A. His sales promotion budget would be maybe a
6 couple hundred thousand dollars in a quarter.

7 Q. So over the course of a year he would have
8 more than \$1,000,000 for the advertising and
9 promotion of Liggett brand cigarettes in
10 West Virginia; is that correct?

11 A. No.

12 MS. STRAUB: No.

13 THE WITNESS: That would be for his entire
14 territory. That would not be a West Virginia
15 specific number.

16 BY MR. BAKER:

17 Q. Okay. What other states are included in
18 his territory?

19 A. Maryland, Virginia, Washington, D.C.

20 Q. Do you have any way of knowing how he
21 allocates this -- this -- this budget between those
22 various four states?

23 A. Not precisely. No.

24 Q. Could you get us that information if we
25 requested it?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 A. We would have the ability to get numbers
2 that were, for example, money that was spent at
3 wholesalers that, for example, would be based in
4 West Virginia, but wouldn't necessarily result in the
5 money all being spent in retail of West Virginia.

6 For example, a wholesaler based in
7 West Virginia would sell cigarettes to customers in
8 West Virginia, as well as potentially border states

9 as well.

10 So money that went into a wholesale account
11 would be disbursed out to -- to multiple retail
12 locations. So the ability to have a precise number
13 of what was spent in the state of West Virginia would
14 not be possible.

15 Q. To back up then, for this four-state
16 region, West Virginia, Maryland, Virginia and
17 Washington, D.C., it's, you said, several hundred
18 thousand dollars per quarter; is that correct?

19 A. Would be available to be spent in various
20 forms of sales promotions. Yes.

21 Q. Can you give me an example of some of these
22 sales promotions?

23 A. Primarily all of the money would be spent
24 in some type of either coupon or carton price, pack
25 price reduction that would be spent at either the

A. WILLIAM ROBERTS, JR. & ASSOCIATES

34

1 wholesale level or the retail level, with the
2 ultimate goal of that money being reflected in the
3 price of the product to the consumer.

4 Q. Is it fair to say then that Liggett spends
5 more than \$1,000,000 per year in advertising and
6 promotion on these four states?

7 A. That's a fair statement.

8 Q. And has this amount increased or decreased
9 in recent years?

10 A. It would decrease, because, again, it would
11 be proportionate to our sales.

12 Q. For its market share, compared to, say,
13 Reynold's or Philip Morris, is this expenditure
14 greater or less --

15 MR. OTERO: Objection.

16 Q. -- on its advertising and promotion?

17 MR. OTERO: Objection to the foundation.

18 THE WITNESS: I really don't know the
19 specific budgets for competing companies. So I
20 wouldn't be in a position to answer that question
21 accurately.

22 BY MR. BAKER:

23 Q. Does Liggett currently budget any money for
24 youth prevention in West Virginia? That is to say,
25 to keep young people from starting or continuing to

A. WILLIAM ROBERTS, JR. & ASSOCIATES

35

1 smoke?

2 A. We do not have any specific budgets
3 identified in that area.

4 Q. Does it have any money budgeted for
5 nationwide youth smoking prevention?

6 A. No, we do not.

7 Q. Do you believe that Liggett has an
8 obligation to spend money on youth smoking
9 prevention?

10 MS. STRAUB: Objection to the form.

11 MR. FULTON: Objection.

12 THE WITNESS: Liggett -- Liggett is
13 committed to ensuring that -- that our products are
14 not made available and are not smoked by youth, and
15 all information available suggests that there are
16 zero Liggett brands that are smoked by youth.

17 BY MR. BAKER:

18 Q. What is the general market for Liggett
19 brands then?

20 A. Consumers probably 40 years and older.

21 Q. Why do you think Liggett brands appeal to
22 consumers 40 years and older?

23 A. Again, Liggett -- Liggett's brands are --
24 are historically brands for the most part that have
25 been on the markets for -- for many years, and are

A. WILLIAM ROBERTS, JR. & ASSOCIATES

36

1 brands that have had, you know, little to no -- no
2 advertising budgets. So the brands aren't very well
3 known to -- to young adult smokers.

4 Q. Are you familiar with Liggett's 1997
5 settlement with the state attorney general?

6 A. In general, yes.

7 Q. Do you view that settlement as being
8 historic or groundbreaking?

9 MS. STRAUB: Objection to the form.

10 MR. FULTON: Objection.

11 THE WITNESS: I think it was something that
12 hadn't been done before.

13 BY MR. BAKER:

14 Q. Excuse me?

15 A. It's something that had not been done
16 before.

17 Q. As part of this settlement Liggett became
18 the first American tobacco company to acknowledge
19 that smoking causes cancer and that nicotine is
20 addictive; is that correct?

21 A. That is correct.

22 Q. Would you characterize these
23 acknowledgements by Liggett as bold?

24 MS. STRAUB: Objection to the form.

25 MR. FULTON: Objection to the form.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

37

1 THE WITNESS: I think they -- they
2 represented Liggett's beliefs at the time, based on
3 the -- the information that was available at the
4 time.

5 BY MR. BAKER:

6 Q. Were these acknowledgements courageous by
7 Liggett?

8 MS. STRAUB: Objection.

9 MR. FULTON: Objection.

10 THE WITNESS: I'm not sure they were made
11 with -- with any regard to whether they were
12 courageous or not. They were basically just an
13 assessment of our beliefs at the time.

14 BY MR. BAKER:

15 Q. Were they important admissions?

16 MS. STRAUB: Objection.

17 THE WITNESS: Again, I think they just --
18 they reflect the -- the ongoing corporate position
19 of -- of assessing our business, and making
20 statements that -- that accurately reflected our --
21 our beliefs at the time.

22 BY MR. BAKER:

23 Q. Liggett has begun to voluntarily disclose
24 the ingredients contained in its cigarettes as part
25 of that settlement; is that correct?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 A. That's correct.
2 Q. Is this disclosure of ingredients
3 important?
4 MS. STRAUB: Objection.
5 THE WITNESS: Again, it's just a -- it's
6 just an accurate representation of what goes into our
7 products.
8 BY MR. BAKER:
9 Q. But is it important?
10 A. It depends on who you're referring to. Is
11 it important to Liggett? I think it's important for
12 us to be accurate. You know, I think we --
13 Q. Is it important -- is it --
14 I'm sorry.
15 A. I think it's important for Liggett to be
16 accurate, and that's -- that's a reason why it would
17 be important to us to have that information on our
18 cartons.
19 Q. Is it important to the consumers?
20 MR. OTERO: Objection.
21 MS. STRAUB: Objection.
22 MR. FULTON: Objection to the foundation.
23 THE WITNESS: I think that's based on
24 individual consumers.
25 BY MR. BAKER:
A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 Q. Do you believe that these admissions
2 regarding causation and addiction and the disclosure
3 of ingredients have changed the way Americans view
4 the dangers of smoking?
5 MS. STRAUB: Objection.
6 THE WITNESS: I have really no knowledge as
7 to -- we haven't done any type of research that would
8 indicate there's been a change in that area. So I
9 really don't have an answer to that.
10 BY MR. BAKER:
11 Q. Are these admissions regarding causation
12 and addiction and the disclosure of ingredients
13 something that you at Liggett are -- are proud of?
14 A. Again, I think the -- the reason for doing
15 it is we believe that it's an accurate and correct
16 thing to do. I don't think that being proud or not
17 proud is a factor in making that decision.
18 Q. Mr. Shipe, what new information did Liggett
19 come across that it did not have prior to 1997 that
20 led to make these acknowledgements regarding the
21 addictive nature of nicotine and that smoking causes
22 cancer?
23 A. I'm not aware of any specific information.
24 Liggett -- Liggett's position with regard to
25 addiction and other issues were always based on the
A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 information that was available at the time and
2 definitions of specific terms or words that were
3 being considered.
4 Q. How did the terminology regarding causation
5 that smoking causes cancer change in 1997?
6 A. I'm not sure it did change.
7 Q. And you aren't aware of any new evidence
8 concerning smoke causing --

9 A. I'm not --
10 Q. -- cancer, are you?
11 A. I'm not personally aware. No.
12 Q. Liggett, had it wanted to, could have just
13 as easily in 1990 admitted that smoking causes
14 cancer, couldn't it?
15 MS. STRAUB: Objection.
16 MR. FULTON: Objection.
17 MR. OTERO: Objection.
18 THE WITNESS: I really can't speak to that.
19 I don't know what information Liggett could have been
20 looking at at the time to base that decision on.
21 BY MR. BAKER:
22 Q. It could have just as easily admitted that
23 nicotine is addictive in 1990, couldn't it have --
24 couldn't it have?
25 MS. STRAUB: Objection.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

41

1 THE WITNESS: Again, I'm not aware
2 personally of -- of the definition of addiction in
3 '90 or the information that was available to Liggett
4 in 1990.
5 BY MR. BAKER:
6 Q. Liggett could have disclosed the
7 ingredients in its cigarettes in 1990, could it not
8 have?
9 A. Liggett could have. Yes.
10 Q. It could have done that in 1980, couldn't
11 it have?
12 A. I believe so, yes.
13 Q. Did it?
14 A. I do not believe so. No.
15 Q. Part of your responsibility during your
16 past 20 years at Liggett in sales and promotion has
17 been to know your product; is that correct?
18 A. From a -- from a marketing perspective,
19 yes.
20 Q. Would it not include knowing the dangers of
21 your product?
22 A. As far as how that would apply to the --
23 the marketing of our products, yes.
24 Q. Did you ever inquire whether or not
25 Liggett's products causes cancer to the management of
A. WILLIAM ROBERTS, JR. & ASSOCIATES

42

1 Liggett?
2 A. No, I did not.
3 Q. Why not?
4 A. Basically my -- my responsibilities were to
5 ensure that using the agreed to warnings by the U.S.
6 government and the FDC, to ensure that our products
7 and our advertising were properly labeled with the
8 warnings, was important, and we ensured that all of
9 our communications conveyed those warnings as -- as
10 needed.
11 Q. Do Liggett's products cause lung cancer?
12 A. Liggett's -- Liggett's products, according
13 to the definition of the surgeon general warnings,
14 cause lung cancer.
15 Q. So you agree that Liggett's products do
16 cause lung cancer?
17 A. Yes.

18 Q. How long has Liggett known that its
19 products cause lung cancer?

20 A. I don't know a specific date. Liggett has
21 always agreed to and been -- been, you know, in
22 agreement with -- with making sure that our products
23 carry the proper warnings.

24 Q. Has Liggett always been in agreement with
25 the content of those warnings?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

43

1 A. I don't know the answer to that question.

2 Q. When you joined the company in 1980, was it
3 generally agreed that cigarettes cause lung cancer?

4 A. I don't know the answer. I know that -- I
5 do not know the answer to that question. I know that
6 our products have always carried the required
7 warnings, and we've always adhered to those
8 requirements.

9 Q. Do you know what Liggett's position was in
10 1980, on whether or not its products cause lung
11 cancer?

12 A. No, I do -- excuse me. No, I do not.

13 Q. Did you ever ask?

14 A. I don't recall asking, no.

15 Q. Did you care?

16 MS. STRAUB: Objection.

17 THE WITNESS: I -- again, I -- I -- my
18 level of -- of responsibility was to ensure that, you
19 know, we -- we abided by all of the rules that were
20 in place, and we did so.

21 BY MR. BAKER:

22 Q. Are you aware of any instances prior to
23 1997 where Liggett, separate and apart from the
24 surgeon general warnings, publicly acknowledged that
25 its products cause lung cancer?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

44

1 A. I'm not aware of any. No.

2 Q. Do Liggett's products cause emphysema?

3 A. Yes, according to the definition of the
4 surgeon general's warning.

5 Q. So you agree that Liggett's products cause
6 emphysema?

7 A. Yes.

8 Q. How long has Liggett known that its
9 products cause emphysema?

10 A. I don't know the answer to that question.

11 Q. Did you ever ask?

12 A. I don't recall, no.

13 Q. Did you care?

14 A. Again, I -- I made sure that, you know, we
15 communicated all of the warnings as -- as they were
16 laid out by the surgeon general.

17 Q. Do you know what Liggett's position on
18 whether or not its products cause emphysema was prior
19 to 1997?

20 A. No, I do not.

21 Q. Are you aware of any instances prior to
22 1997 where Liggett acknowledged that its products
23 cause emphysema?

24 A. No, I do not.

25 Q. Do Liggett's products cause heart disease?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 A. Yes, as defined by the surgeon general.
2 Q. Again, do you agree with the surgeon
3 general that Liggett's products do cause --
4 A. Yes, I do.
5 Q. -- heart disease?
6 How long has Liggett known that its
7 products cause heart disease?
8 A. I don't know the answer to that.
9 Q. Did you ask?
10 A. I don't recall.
11 Q. Did you get -- do you care?
12 MS. STRAUB: Objection.
13 THE WITNESS: Again, I -- I think it's
14 important that Liggett conveys the warnings as
15 determined by the surgeon general.
16 BY MR. BAKER:
17 Q. When you joined the company in 1980, was it
18 generally accepted within Liggett that its products
19 cause heart disease?
20 A. I don't know the answer to that.
21 Q. Do you know what Liggett's position was on
22 whether or not its products cause heart disease prior
23 to 1997?
24 A. No, I do not.
25 Q. Are you aware of any instances prior to
A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 1997 where Liggett publicly acknowledged that its
2 products cause heart disease?
3 A. I'm not aware of any.
4 Q. Do Liggett cigarettes cause hazardous
5 substances?
6 MS. STRAUB: Objection to the form.
7 THE WITNESS: I don't know the answer to
8 that question.
9 BY MR. BAKER:
10 Q. Do they contain carcinogens?
11 A. I don't know the answer to that question.
12 Q. But part of your job responsibility, is it
13 not, is to know your product, but you don't know
14 whether or not it contains any hazardous substance?
15 MS. STRAUB: Objection.
16 MR. FULTON: Objection.
17 MS. STRAUB: Mr. Shipe isn't a researcher
18 or scientist.
19 THE WITNESS: I know our products based on
20 the specifications of the product from the standpoint
21 of whether it's a menthol cigarette or a nonmenthol,
22 whether it's a king size or 100. Whether it --
23 whether it has an advertising position. But I'm not
24 that well-schooled in the -- in the research side or
25 the technical analysis of our cigarettes.
A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 BY MR. BAKER:
2 Q. Let's step back to the more general then.
3 The propensity to cause lung cancer, emphysema or
4 heart disease is true for all of Liggett cigarettes,
5 irrespective of brand; is that correct?
6 A. That's correct.
7 Q. Does smoking Liggett cigarettes increase
8 one's risk of contracting lung disease or lung

9 cancer?
10 A. Liggett cigarettes are -- have -- are a
11 cause of lung cancer.
12 Q. So would you agree that if you smoke
13 Liggett cigarettes, it increases your risk of
14 contracting lung cancer?
15 A. I can't speak to what the risk would be not
16 smoking, but I can say that smoking Liggett
17 cigarettes are a -- are a cause of lung cancer.
18 Q. And so you would agree that it increases
19 your risk by smoking Liggett cigarettes; is that
20 correct?
21 A. Again, I -- well, I can't speak to what
22 risks may be out there with any individual person not
23 smoking the cigarette.
24 Q. Would you agree that if you don't smoke
25 Liggett cigarettes you have a lesser risk of

A. WILLIAM ROBERTS, JR. & ASSOCIATES

48

1 contracting lung cancer than if you do smoke Liggett
2 cigarettes?
3 A. Again, it depends on what other activities
4 a given person is involved in, other than smoking
5 Liggett cigarettes.
6 Q. But smoking Liggett cigarettes, would you
7 agree, is at least one risk factor for lung cancer?
8 A. It is -- it is a cause of lung cancer.
9 Q. And, once again, would you agree that it
10 doesn't matter which brand of Liggett cigarettes you
11 smoke, Liggett cigarettes do cause lung cancer?
12 A. That's correct.
13 Q. Same question for emphysema. It doesn't
14 matter which brand you smoke, they all can cause
15 emphysema?
16 A. That's correct.
17 Q. Same for heart disease. It doesn't matter
18 which brand you smoke, they can all cause heart
19 disease?
20 A. That's correct.
21 Q. Lung cancer, emphysema, heart disease are
22 all serious diseases; do you agree?
23 MS. STRAUB: Objection to the form.
24 THE WITNESS: They're all -- they're all
25 diseases.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

49

1 BY MR. BAKER:
2 Q. Are they serious?
3 A. I think they can be.
4 Q. Do you think if you smoke cigarettes it
5 would be a good thing to get regular medical
6 checkups?
7 A. I think it's a good idea to get regular --
8 regular medical checkups whether you smoke or don't
9 smoke cigarettes.
10 Q. But because Liggett cigarettes cause lung
11 cancer, emphysema and heart disease do you think you
12 should get regular medical checkups to check
13 specifically for these three diseases?
14 A. Again, I would have checks for those three
15 diseases whether I was a smoker or nonsmoker.
16 Q. Mr. Shipe, are you familiar with what's
17 come to be known as the attorney general's tobacco

18 litigation?

19 A. I'm aware of the -- the settlement with the
20 attorney general.

21 Q. And prior to the settlement there was
22 litigation that led to it; is that correct?

23 A. Yes.

24 Q. Are you familiar with the fact that in
25 connection with the Minnesota tobacco litigation,

A. WILLIAM ROBERTS, JR. & ASSOCIATES

50

1 which you referred to earlier as the Blue Cross Blue
2 Shield tobacco litigation, a document depository was
3 set up in Minnesota?

4 A. Yes. I'm aware of that.

5 Q. Who in your department or section in the
6 marketing and promotion or sales department
7 participated in the collection of documents to be put
8 in this Minnesota depository?

9 A. I believe myself and a person who is
10 presently my director of sales for the south business
11 unit, Mr. Harry Poole, P-O-O-L-E. The two of us
12 personally retrieved documents for that.

13 Q. And when did this retrieval take place?

14 A. I'm not sure I know specific dates.
15 Basically whether it be for that case or potentially
16 other cases, over a period of maybe a year or so.
17 There were pretty much a retrieval, any and all
18 documents of Liggett's that had anything to do with
19 sales and marketing activities of any of our brands.

20 Q. Are there any categories of documents that
21 you did not collect relating to smoking or health or
22 to your brands?

23 A. I can't speak to the research side. I -- I
24 can speak to documents that were pulled as it related
25 to sales and marketing activities. And for the most

A. WILLIAM ROBERTS, JR. & ASSOCIATES

51

1 part it was basically a total -- a total pull of
2 all -- all information.

3 Q. So no documents were left behind?

4 A. Not that had to do with sales -- sales and
5 marketing of cigarettes that I was aware of.

6 Q. Have there been any subsequent collection
7 of documents from your department since that -- that
8 collection back in the mid-1990s?

9 A. There have been some -- some competitive
10 information that has been supplied to Liggett counsel
11 for some -- some legal action that Liggett has taken
12 against some of our competitors since that time.

13 Q. But none, to your knowledge, in connection
14 with a personal injury type lawsuit; is that correct?

15 A. Not that I'm aware of.

16 Q. How did you come to work at Liggett in
17 1980?

18 A. It was a situation where I was interested
19 in getting into a sales position or sales profession,
20 and was hired through an employment agency in
21 Columbus, Ohio.

22 Q. And so you approached the employment
23 agency, or they approached you first?

24 A. I approached the employment agency, and
25 they put me in touch with Liggett for an interview.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 Q. With whom did you have discussions at
2 Liggett about your employment?

3 A. Two people that I would have initially --
4 or personally I would have initially interviewed with
5 was at that time a district sales manager in the Ohio
6 area, and his name is Bob Dawley, D-A-W-L-E-Y.

7 Q. During the interview process did Liggett
8 inquire into your views on the health effects of
9 smoking?

10 A. I don't recall if they did.

11 Q. As you've been promoted through the ranks
12 at Liggett have they ever inquired into your beliefs
13 or personal views about smoking -- the health effects
14 of smoking?

15 A. I don't recall.

16 Q. What are your views on the health effects
17 of smoking, your personal views?

18 MS. STRAUB: Objection. Irrelevant.

19 THE WITNESS: I -- my personal views. I
20 concur with our corporate position on smoking.

21 BY MR. BAKER:

22 Q. Have you always concurred with your
23 corporate view -- or your corporate -- Liggett's
24 corporate view on the health effects of smoking?

25 A. I'm not sure I've always known what the

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 official corporate view was. So it would be
2 impossible for me to know if I always agreed with it.

3 Q. When you joined Liggett, what kind of
4 training were you given to help you learn about
5 Liggett's cigarette products?

6 A. I was given some -- some very basic sales
7 orientation. How to -- where -- where certain calls
8 were located within the territory, who the
9 appropriate contacts at the various calls were. What
10 Liggett brands -- you know, which brands were
11 Liggett's, since I was brand new to the company.

12 What type of display materials were
13 available to -- to display the brands. What some of
14 the -- what the legal requirements were from a
15 standpoint to ensure that our products were marketed
16 and advertised correctly.

17 Q. Did you discuss the qualities that set
18 Liggett products apart from other manufacturers'
19 cigarettes?

20 A. Not in a specific sense. No.

21 Q. So one cigarette was the same as another?
22 It just simply had a different brand name; is that
23 correct?

24 MS. STRAUB: Objection.

25 MR. FULTON: Objection.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 THE WITNESS: Different brand name.
2 Possibly a different -- a different taste that
3 would -- you know, consumers would have different
4 preferences on how certain cigarettes tasted from a
5 flavor standpoint.

6 BY MR. BAKER:

7 Q. As a marketing man, what are the factors
8 that consumers are interested in in a cigarette

9 product?

10 A. I think in today's world that -- there are
11 certain -- certain brand names that are just more
12 well-known because of advertising that are important
13 to some consumers. Some consumers are more
14 interested in price and availability.

15 Q. Are there any other qualities besides brand
16 name and price and availability?

17 A. Style of cigarettes. Some cigarettes have
18 a slim configuration. Other cigarettes are 100
19 millimeters. Some cigarettes are king size. So
20 there's preferences in those areas.

21 Q. Is product safety a concern that consumers
22 have; do you think?

23 MS. STRAUB: Objection. Calls for
24 speculation.

25 THE WITNESS: I think consumers expect a

A. WILLIAM ROBERTS, JR. & ASSOCIATES

55

1 cigarette to be -- you know, conform to the -- to the
2 required specifications that make it a cigarette that
3 can be marketed in this country.

4 BY MR. BAKER:

5 Q. Do you think if Liggett were to market a
6 cigarette that had less of a propensity to cause lung
7 disease, emphysema, heart disease, that would appeal
8 to consumers?

9 MS. STRAUB: Objection. Speculation.

10 THE WITNESS: Potentially some consumers.

11 BY MR. BAKER:

12 Q. Did you ever suggest to -- to management
13 that this might be an avenue that Liggett might want
14 to explore in its product development?

15 A. I don't recall ever making that suggestion.

16 Q. On a scale of one to ten, with ten being
17 the greatest, how would you rate Liggett's commitment
18 to product safety?

19 A. I would say from the standpoint of
20 producing a cigarette that's -- that's free of
21 defects, that, you know, we're probably a -- probably
22 a nine.

23 Q. When you say, "free of defects," what do
24 you mean?

25 A. Well, a cigarette that -- that smokes the

A. WILLIAM ROBERTS, JR. & ASSOCIATES

56

1 way a cigarette is supposed to smoke. A cigarette
2 that doesn't -- doesn't fall apart upon smoking it.
3 A product that's, you know, from a specification
4 standpoint is a good product.

5 Q. Have you ever heard of Palladium cigarette
6 technology?

7 A. I'm aware of Palladium cigarettes.

8 Q. What are they?

9 A. There was research done, I believe, by
10 Liggett, back in the 1950s that used Palladium as
11 a -- as a component in a potentially new cigarette
12 product.

13 Q. And what benefit did this have in the new
14 cigarette product?

15 A. I don't know the specific details, but
16 based on the information that I've seen through news
17 media and -- and news reports, there -- there were

18 some tests that suggested that the Palladium
19 cigarette was a, quote, safer cigarette from the
20 standpoint of -- of causing cancer.

21 Q. And when did you hear these news reports?

22 A. When -- gee, when did the cigarette bashing
23 start? Mid-90s.

24 Q. Did this excite you as a salesperson, that
25 you'd have a new product to bring out?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

57

1 A. Again, the reports I saw were basically
2 just compilations of old information back in the
3 '50s. And there was also suggestions that there
4 were -- there were certain known or potentially
5 unknown risks associated with the Palladium that
6 would have made it not, in fact, a safer or a more
7 better cigarette.

8 Q. And what do you base that information on?

9 A. Again, just based on the -- the reports I
10 saw on the news media.

11 Q. Did this cigarette -- this proposed
12 cigarette that used Palladium technology, that was
13 never marketed by Liggett; is that correct?

14 A. I don't -- I don't believe so. No.

15 Q. Did it have a working brand name, to your
16 knowledge?

17 A. I'm not aware of any.

18 Q. Have you ever heard of the brand name Epic?

19 A. We presently have a brand name Epic on the
20 market.

21 Q. And does that brand incorporate Palladium
22 cigarette technology?

23 A. No, it does not.

24 Q. Do you think Liggett spends enough money
25 trying to make its product safer? When I mean,

A. WILLIAM ROBERTS, JR. & ASSOCIATES

58

1 "safer," I mean not that it falls apart, but safer in
2 that it has a less -- a lesser propensity to cause
3 lung cancer, heart disease and emphysema?

4 A. I'm not sure -- I think Liggett makes a
5 cigarette today that's as good of a cigarette as it
6 can make. I don't know if -- I don't know if there's
7 any other -- any other cigarette product we can make
8 that would -- that would have a lesser effect.

9 Q. Are you aware of any product that's in the
10 research and development stage that would be a safer
11 cigarette of Liggett?

12 A. No, I'm not.

13 Q. Is Pyramid a brand of cigarettes
14 manufactured and marketed by Liggett?

15 A. Yes, it is.

16 Q. When was the Pyramid brand introduced?

17 A. I believe Pyramid was first distributed in
18 late 1988 or early 1989.

19 Q. And what set the -- the Pyramid brand apart
20 from other cigarettes manufactured by Liggett?

21 A. Initially it was -- it was marketed as an
22 ultra low-priced cigarette.

23 Q. What do you mean by ultra low price?

24 A. Just the list price of the product to our
25 customers was a -- was an extremely low price

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 relative to the other cigarettes that Liggett
2 manufactured.
3 Q. Did it have a unique flavor?
4 A. No.
5 Q. Did it have a unique level of tar delivery?
6 A. No, it did not.
7 Q. Did it have a unique level of nicotine
8 delivery?
9 A. No, it did not.
10 Q. Unique level of carbon monoxide delivery?
11 A. No, it did not.
12 Q. So the sole thing that set it apart was the
13 price?
14 A. For the most part, yes.
15 Q. In virtually every other respect, to the
16 best of your knowledge, it was the same as any other
17 Liggett cigarette?
18 A. Yes.
19 Q. What was the target market for -- for the
20 Pyramid brand of cigarettes?
21 A. I was not in the marketing department when
22 it was first introduced, but I'm not aware of any --
23 any specific target or type of consumer that that
24 brand was designed to appeal to.
25 Q. What percentage of Liggett's overall sales
A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 does Pyramid brand cigarettes make up?
2 A. During what time frame?
3 Q. Let's start with 1985, and then move in
4 five-year increments.
5 A. Okay. Well, it was introduced in 1989. So
6 I would say --
7 Q. I'm sorry. 1990?
8 A. In 1990 it probably represented about 25 to
9 30 percent of Liggett's units sales. And that
10 probably decreased in 1995 down to 15 percent. And
11 from 1995 to present it's probably stayed in the ten
12 to 15 percent range.
13 Q. And what brands have taken up the slack in
14 Liggett's overall sales?
15 A. Well, Liggett's overall sales have been
16 declining. The mix of Liggett's business has shifted
17 to primarily one of our larger private label
18 customers, which probably accounts for our largest
19 percent of overall sales.
20 Q. And what brand is that?
21 A. That would be the Tourney brand.
22 Q. Tourney?
23 A. Tourney that we manufacture for Speedway
24 Super America.
25 Q. And those would be sold in West Virginia;
A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 is that correct?
2 A. There would be a limited number of Speedway
3 convenience stores in West Virginia, I believe.
4 Q. Once again, going from 1990 to 1995 and
5 present, what percentage of Liggett's overall profits
6 does the Pyramid brand make up?
7 A. I'm not sure I can answer that question,
8 because we don't track profits by individual brand.

9 We -- we would -- we would use a more -- we would use
10 a term that's referred to as marketing margin, which
11 does not apply any -- any sales or administrative
12 costs to the brand level.

13 Q. Then what is the marketing margin on
14 Pyramid brand cigarettes?

15 MS. STRAUB: In 1990?

16 MR. BAKER: We'll go in five-year
17 increments. '90 to '95.

18 THE WITNESS: As a percent --

19 BY MR. BAKER:

20 Q. As a percent of Liggett's overall marketing
21 margin?

22 A. Given that Pyramid as a discount brand
23 would have low -- lower margins than the premium
24 brands, the percent of contribution would be lower
25 than the percent of sales.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

62

1 So when -- when Pyramid was 25 to -- to 30
2 percent of the unit sales, it probably was in the
3 range of ten percent of the marketing margin. When
4 we were in a ten to 15 percent range of sales, we
5 would be more in probably the -- you know, the five
6 to ten percent area of margin delivery. So it would
7 be proportionally lower.

8 Q. What percentage of Liggett's overall
9 marketing budget does Pyramid brand cigarettes make
10 up?

11 A. It would more -- more closely follow the
12 percent of sales. It would track maybe slightly
13 higher, just because of the fact that one of the
14 reasons why it delivers less margin is we spend
15 proportionately more money against it, as well as
16 having a lower list price.

17 So if it was in the 25 to 30 percent range,
18 it probably represented 30 to 35 percent roughly of
19 the -- of the advertising marketing -- or advertising
20 promotion dollars. When we were in the 15 to 20
21 percent range, it was probably representing 25 to 30
22 percent.

23 Q. So the Pyramid brand is comparatively
24 heavily marketed; is that correct?

25 A. It's promoted from the standpoint --

A. WILLIAM ROBERTS, JR. & ASSOCIATES

63

1 Q. Promoted.

2 A. -- of keeping the price of the product
3 competitive with competitive brands.

4 Q. Would you fault a person for smoking
5 Pyramid brand cigarettes?

6 MS. STRAUB: Objection.

7 MR. FULTON: Objection.

8 THE WITNESS: I would think someone would
9 smoke a Pyramid brand if they -- if they try the
10 product and found it to -- to be a flavor or smoke of
11 a cigarette that was comparable to what they had been
12 smoking or enjoyed.

13 BY MR. BAKER:

14 Q. In smoking Pyramid brand cigarettes,
15 though, that's what you want them to do; is that
16 correct?

17 MS. STRAUB: Objection.

18 THE WITNESS: We would -- we would like to
19 have adult smokers smoke Pyramid cigarettes.
20 BY MR. BAKER:
21 Q. So would you blame them for smoking Pyramid
22 cigarettes?
23 MS. STRAUB: Objection.
24 MR. FULTON: Objection.
25 THE WITNESS: I'm not sure I understand the
A. WILLIAM ROBERTS, JR. & ASSOCIATES

64

1 connotation of blame there.
2 BY MR. BAKER:
3 Q. By smoking Pyramid brand cigarettes they're
4 doing precisely what you hope for them to do, is that
5 correct, by your marketing and promotion?
6 A. Our marketing promotion goals are to make
7 the brands available, and -- and if it's -- if it's a
8 product that someone finds that they like to smoke,
9 we would -- we would hope to make that product
10 available to them.
11 Q. Do you think there's anything wrong with a
12 person smoking?
13 MS. STRAUB: Objection.
14 THE WITNESS: I think if a person chooses
15 to smoke, that's -- that's their -- that's their
16 decision, knowing -- knowing the risk of smoking.
17 BY MR. BAKER:
18 Q. Do you think consumers know all of the
19 risks of smoking?
20 MS. STRAUB: Objection to the speculation.
21 THE WITNESS: I -- I think, based on my --
22 my personal opinion is I -- I think we'd have to look
23 long and hard to find an adult smoker who doesn't
24 know that there are significant risks with smoking.
25 BY MR. BAKER:
A. WILLIAM ROBERTS, JR. & ASSOCIATES

65

1 Q. So, therefore, would it be your personal
2 view that Liggett's statements that smoking causes
3 cancer in 1997 was insignificant?
4 MS. STRAUB: Objection.
5 MR. FULTON: Objection. He didn't say
6 that.
7 THE WITNESS: I wouldn't say it's
8 insignificant.
9 BY MR. BAKER:
10 Q. Why is it significant?
11 A. Again, I think it's -- it's neither
12 significant or insignificant. It's a reflection
13 of -- of what Liggett believes. I think it's
14 important for people to be open with what they
15 believe.
16 Q. Prior to 1997, though, is it correct
17 Liggett had never publicly stated that smoking causes
18 cancer?
19 A. I am not aware if it they had or had not.
20 I don't believe they had, but I --
21 Q. Do you think consumers put trust in what
22 a -- in what a company says about its product?
23 MS. STRAUB: Objection.
24 THE WITNESS: I think consumers expect --
25 expect what they -- they hear from companies to be
A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 accurate.

2 BY MR. BAKER:

3 Q. Do you think you can be inaccurate by not
4 giving full and complete information regarding the
5 product?

6 A. I think it's important to -- to be open and
7 honest with what you -- you know to be facts.

8 Q. And earlier you said you did not know if
9 Liggett cigarettes contain hazardous substances; is
10 that correct?

11 A. I'm not aware of -- of specific hazardous
12 substances that are contained in cigarettes. I know
13 that cigarettes -- Liggett cigarettes -- excuse me.
14 Liggett cigarettes cause lung cancer. I can't speak
15 to what specifically is the agent that causes lung
16 cancer.

17 Q. Although, you can't identify the specific
18 thing in cigarettes that cause lung cancer, do you
19 think it's fair to assume that there is something
20 within the cigarettes that causes lung cancer?

21 MS. STRAUB: Objection.

22 MR. FULTON: Objection.

23 THE WITNESS: I think there's something
24 within the process of smoking a cigarette that causes
25 lung cancer.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 BY MR. BAKER:

2 Q. So there's something in the smoke that
3 causes lung cancer?

4 MR. FULTON: Objection.

5 MS. STRAUB: Objection.

6 THE WITNESS: I don't know where it is.

7 BY MR. BAKER:

8 Q. Do you know of any steps by Liggett to
9 identify what these unknown substances are?

10 A. Not aware of any. No.

11 Q. What is Lark Free, have you ever heard of
12 that brand?

13 A. No, I have not.

14 Q. Have you ever heard of something called Low
15 Smoke Rio, R-I-O?

16 A. No, I have not.

17 Q. Mr. Shipe, all of Liggett's cigarettes that
18 are sold in the United States are required to carry
19 one of four rotating warnings; is that correct?

20 A. That is correct.

21 Q. And each package of Liggett cigarettes that
22 you know of carries that warning that's sold in the
23 United States?

24 A. The -- the cartons carry the warning. Yes.

25 Q. The individual cigarette packages also

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 carry the four rotating warnings; is that correct?

2 A. Yes, that's correct.

3 Q. In the absence of federal law requiring it
4 to do so, would Liggett continue to place those
5 rotating warning labels on the packages --

6 MS. STRAUB: Objection.

7 BY MR. BAKER:

8 Q. -- of its cigarettes?

9 A. I can't speak to what we would do. I know
10 that Liggett presently has a warning, "Smoking is
11 addictive," labeling on our product that is not
12 required by the federal government.

13 Q. And if Liggett wanted to, it could put
14 additional warning labels on its cigarettes; is that
15 correct?

16 MS. STRAUB: Objection.

17 THE WITNESS: There are many additional
18 things that we could do on our products.

19 BY MR. BAKER:

20 Q. Including placing additional warning
21 labels; is that correct?

22 A. That would be one possibility.

23 Q. Are there any warning labels that you think
24 would be appropriate to be added to Liggett brand
25 products?

A. WILLIAM ROBERTS, JR. & ASSOCIATES

69

1 A. I believe the surgeon general warnings do a
2 very admirable job of identifying the risks
3 associated with smoking.

4 Q. Has it at all times done an admirable job
5 of warning smokers of the dangers?

6 A. I'm not aware of all of the specific
7 surgeon general warnings that have been in place
8 since they were first implemented, but I think as --
9 as the surgeon general has taken steps to -- to
10 ensure that consumers are made aware of the risks
11 as -- as the facts became known.

12 Q. When do you think it became known that
13 smoking causes lung cancer?

14 A. I don't know what that specific date would
15 be.

16 Q. When do you think it became known that
17 smoking was addictive?

18 A. Again, I don't know that specific date. It
19 would depend on at any given time what the definition
20 of addiction used to make that determination really.

21 Q. Back to lung cancer. It's been known for a
22 very long time, wouldn't you agree, that smoking
23 causes lung cancer?

24 MS. STRAUB: Objection.

25 THE WITNESS: Again, I don't know the

A. WILLIAM ROBERTS, JR. & ASSOCIATES

70

1 specific date of when that determination was made. I
2 think there was different levels of risks associated
3 with smoking over the years.

4 BY MR. BAKER:

5 Q. So ten years ago it may not have been fully
6 known that smoking causes lung cancer; do you -- is
7 that what you're saying?

8 A. I'm saying that the -- it's been a period
9 of transition. Again, I don't know the specific date
10 of -- of when the specific cause of -- or that
11 smoking was a specific cause of lung cancer was made.

12 Q. Would you agree that over time people's
13 knowledge of the health dangers of cigarette smoking
14 has increased?

15 MR. OTERO: Objection.

16 THE WITNESS: I think people have had --
17 individual people have had different levels of

18 awareness of the risks associated with smoking. I
19 think -- I think there's been a -- again, on a -- my
20 personal opinion is that people have known for --
21 that there have been risks -- significant risks
22 associated with smoking for -- for a very long time.

23 BY MR. BAKER:

24 Q. Have they known it longer than Liggett?

25 MS. STRAUB: Objection.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

71

1 THE WITNESS: I don't -- I don't know
2 really in -- what all of Liggett's positions over the
3 years, as far as what they have known and what they
4 haven't known. So I don't know if I can answer that
5 question accurately.

6 BY MR. BAKER:

7 Q. Do you think Liggett should be an expert in
8 the knowledge of the dangers of its products?

9 A. I think -- I think Liggett -- Liggett
10 knows -- knows its products, and it has known its
11 products.

12 Q. Do you think Liggett is in the best
13 position vis-a-vis the consumer to identify product
14 modifications that would make its product safer?

15 A. I think -- I think Liggett has an ability
16 to, again, know it -- know its products, and
17 Liggett -- we have the ability to -- to test our
18 products.

19 Q. You wouldn't expect a consumer to know more
20 about Liggett's products than Liggett, would you?

21 MS. STRAUB: Objection.

22 THE WITNESS: Not on -- not on the specific
23 technical basis of -- of how the cigarette is made.
24 No.

25 BY MR. BAKER:

A. WILLIAM ROBERTS, JR. & ASSOCIATES

72

1 Q. On the dangers? Would you expect an
2 ordinary consumer to know more about the dangers of
3 Liggett's products than Liggett itself?

4 A. I can't say I would expect them to know
5 more.

6 Q. If Liggett could have made a safer product,
7 but didn't for one reason or another, that would be
8 wrong; would you agree?

9 MS. STRAUB: Objection.

10 MR. FULTON: Object to the form of that
11 question.

12 THE WITNESS: Again, I think it depends
13 on -- in the context of what is truly safer.

14 BY MR. BAKER:

15 Q. Safer meaning having a lower propensity to
16 cause lung cancer, emphysema or heart disease?

17 A. Provided there weren't other risks
18 associated with the product that would be as severe
19 or more severe than those risks.

20 Q. Would you agree that Liggett is in a better
21 position than the ordinary consumer to identify
22 product modifications that would make its cigarettes
23 safer?

24 A. Yes.

25 MR. BAKER: Why don't we take a short break

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 for maybe ten, 15 minutes.

2 THE VIDEOGRAPHER: Off the record. The
3 time is 10:28.

4 (Recess taken at 10:28 until 10:46.)

5 THE VIDEOGRAPHER: On the record. The time
6 is 10:46.

7 BY MR. BAKER:

8 Q. Mr. Shipe, a moment ago -- more than a
9 moment ago. A little while ago you spoke of the
10 person who was in charge of the Virginia, Maryland,
11 D.C., West Virginia region; is that correct?

12 A. Yes.

13 Q. What is that person's name?

14 A. Excuse me. That person's name is Gene.
15 Last name is Cumbia, C-U-M-B-I-A.

16 Q. And where is he based out of?

17 A. He lives in southern Virginia.

18 Q. Near [DELETED] or --

19 A. He just recently moved. I think he's --
20 it's in the general [DELETED] area.

21 Q. Earlier in the deposition we were talking
22 about risk and whether or not smoking cigarettes
23 increased your risk of contracting cancer, heart
24 disease or emphysema. Would you agree that
25 irrespective of all of your other risk factors the

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 fact that you do smoke increases your chance of
2 contracting lung cancer, emphysema or heart disease?

3 A. I can say that smoking cigarettes is a
4 risk, and it is something that does cause lung
5 cancer. I can't accurately identify that risk in
6 relation to other risks that are out there.

7 Q. In your various positions as -- as a
8 marketer and a sales manager do you ever get
9 inquiries from customers regarding health concerns or
10 the health aspects of Liggett brand cigarettes?

11 A. I don't recall getting any.

12 Q. Have you ever heard of something called
13 know-your-product reviews?

14 A. I first became aware of -- of that during
15 some documents that I reviewed yesterday in
16 preparation for this deposition.

17 Q. So know-your-product reviews are limited to
18 the R&D department; is that your understanding?

19 A. That's correct.

20 Q. Is there an equivalent type of review or
21 regular meeting that you have regarding sales and
22 promotion that enables you to know your product
23 better?

24 A. I think the only thing -- and I wouldn't
25 call it a regular meeting -- would be product

A. WILLIAM ROBERTS, JR. & ASSOCIATES

1 information from a standpoint of information needed
2 to sell the product in -- i.e., if you have a new
3 product, what are the -- the product UPC codes? What
4 are the -- what are the case configurations?

5 What is the list price? What is the
6 product availability? Dates? Meetings on --
7 information along those lines would be disseminated
8 among sales and marketing personnel as needed, but --

9 but there would be no set regular meetings where
10 information like that was disseminated.

11 Q. When Liggett placed the, "Smoking is
12 addictive," new label on its cigarettes in 1997, did
13 your sales force tout that as a benefit to the
14 wholesalers in the various stores -- retailers that
15 you sold your product at?

16 MS. STRAUB: Objection to the form.

17 THE WITNESS: I believe they made our
18 customers aware that that was something that would be
19 placed on our products, but did not position it as
20 something that was -- that would improve the sales of
21 Liggett's products.

22 BY MR. BAKER:

23 Q. What kind of information, aside from simply
24 saying, our products will now carry this new warning
25 label, did they relate to the wholesalers and

A. WILLIAM ROBERTS, JR. & ASSOCIATES

76

1 retailers, if any?

2 A. I'm not aware of any.

3 Q. Are you aware of any reaction from the
4 wholesalers or the retailers to the placement of this
5 new label on your cigarettes?

6 A. I don't recall getting any -- any specific
7 reaction from any customers. No.

8 Q. In your 20 years of sales and marketing
9 you've had an opportunity to observe the marketing
10 and sales of other tobacco companies; is that
11 correct?

12 A. From a distance. Yes.

13 Q. When developing your sales and marketing
14 strategies, do you take into consideration the
15 marketing and sales strategies that you can perceive
16 of the other tobacco companies?

17 A. Not really. No.

18 Q. As a person involved in the marketing and
19 sale of cigarettes have you at anytime seen a
20 marketing or sales practice undertaken by another
21 tobacco company that you felt targeted underaged
22 smokers?

23 A. Again, I really can't -- can't speak to
24 what the goals of competitive programs would be,
25 having not been part of any strategy -- strategy

A. WILLIAM ROBERTS, JR. & ASSOCIATES

77

1 sessions that go into those development plans.

2 Q. Would you agree that you have a certain
3 amount of expertise or experience in sales and
4 marketing them?

5 A. Not to youth.

6 Q. But, no, generally speaking, you have
7 experience in sales and marketing?

8 A. I have experience in sales and marketing of
9 cigarettes, and by, therefore, definition my
10 experience is limited to -- to what may work or not
11 work with adult smokers.

12 Q. Are you familiar -- familiar with the --
13 the camel campaign, Joe Camel campaign?

14 A. Yes, I am.

15 Q. Looking at that with your experience in
16 marketing your cigarettes to adults, Liggett brands
17 cigarettes to adults, do you believe that the Joe

18 Camel campaign could appeal to youth?
19 MS. STRAUB: Objection. Relevance.
20 THE WITNESS: I can't really speak to that
21 with any degree of accuracy.
22 BY MR. BAKER:
23 Q. What's your opinion of a sales and
24 marketing practice that targets underaged smokers?
25 A. I don't think cigarette smoking is
A. WILLIAM ROBERTS, JR. & ASSOCIATES

78

1 something that should be marketed to anyone other
2 than adult smokers.
3 Q. What constitutes an adult smoker in your
4 mind?
5 A. Someone over the age of 21, who presently
6 smokes cigarette

decades with Liggett has

25 the company placed corporate profits above customer

A. WILLIAM ROBERTS, JR. & ASSOCIATES

Q. During your two

86

1 safety?

2 MS. STRAUB: Object to the form.

3 THE WITNESS: I can't -- I can't answer

4 that.

5 BY MR. BAKER:

6 Q. During your two decades at Liggett has the
7 company always been honest and forthright about the
8 health dangers of its product?

9 A. To the best of my knowledge, they have.

10 MR. BAKER: Thank you, Mr. Shipe. I don't
11 have any more questions, but I do reserve the right
12 to ask some more, if anyone else does.

13 MS. STRAUB: I just want to take a
14 one-minute break.

15 MR. BAKER: That's fine.

16 THE VIDEOGRAPHER: Off the record. The
17 time is 11:04.

18 (Recess taken at 11:04 until 11:08.)

19 THE VIDEOGRAPHER: On the record at 11:08.

20 CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT

21 BY MS. STRAUB:

22 Q. Mr. Shipe, are you a scientist?

23 A. No, I'm not.

24 Q. Are you a researcher?

25 A. No, I'm not.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

87

1 Q. A doctor?

2 A. I wish.

3 Q. Do you have any education or background in
4 medicine or science?

5 A. No, I do not.

6 Q. Have you ever conducted any research for
7 Liggett?

8 A. No, I haven't.

9 Q. So given your background and experience are
10 you able to give an opinion on the differences in the

11 health risks between various products that smokers
12 may be exposed to?
13 A. No, I cannot. Not with any degree of
14 accuracy.
15 Q. We might have said this before, but when
16 did you first become an officer of Liggett?
17 A. 1996.
18 Q. Prior to 1996 did you meet with the CEO of
19 Liggett on a regular basis?
20 A. Not on any type of regular basis. No.
21 Q. Is Lorillard Tobacco Company larger than
22 Liggett?
23 A. Yes, it is.
24 MS. STRAUB: I don't have any other
25 questions.

A. WILLIAM ROBERTS, JR. & ASSOCIATES

88

1 MR. BAKER: None for me.
2 MR. OTERO: (Shook head from side to side.)
3 MR. BAKER: Off the record.
4 THE VIDEOGRAPHER: This concludes the
5 testimony of Mr. Steven Shipe. The ending time is
6 11:10 a.m.
7 (Whereupon, at approximately 11:10 a.m.,
8 the deposition in the above-entitled matter ceased.)
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. WILLIAM ROBERTS, JR. & ASSOCIATES

89

1 STATE OF NORTH CAROLINA)
2 COUNTY OF HARNETT)
3 CERTIFICATE OF REPORTER
4 I, LISA A. DeGROAT, RPR, the reporter by whom
5 the foregoing deposition was taken, do hereby certify
6 that the testimony of the witness appearing in the
7 foregoing deposition was taken by me in Stenotype and
8 thereafter reduced to typewriting under my direction,
9 pages 1 through 88; that I am neither counsel for,
10 related to, nor employed by any of the parties to the
11 action in which this deposition was taken; and
12 further, that I am not a relative or employee of any
13 attorney or counsel employed by the parties hereto,
14 nor financially or otherwise interested in the
15 outcome of the action.
16 IN WITNESS WHEREOF, I have hereto set my hand
17 and affixed my official notarial seal, this the 29th
18 day of August, 2000.
19

20

21

22 LISA A. DeGROAT

23 Registered Professional Reporter and

24 Notary Public

25 My commission expires: October 2, 2000

A. WILLIAM ROBERTS, JR. & ASSOCIATES